

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARK STEVEN ELK SHOULDER,

Defendant.

CR 19-29-BLG-SPW

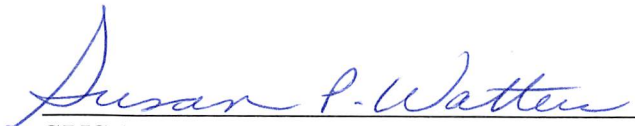
ORDER

Before the Court is Defendant Mark Steven Elk Shoulder's motion to dismiss the indictment. (Doc. 15.) Elk Shoulder raises four arguments, all of which have been rejected by the Ninth Circuit: (1) Elk Shoulder does not have a duty to register under SORNA because the requirement to do so exceeds the limited authority under the Major Crimes Act (rejected in *United States v. Elk Shoulder*, 738 F.3d 948 (9th Cir. 2013)); (2) SORNA violates the Ex Post Facto Clause (rejected in *Elk Shoulder*, 738 F.3d 948); (3) SORNA violates the Nondelegation Doctrine (rejected in *United States v. Richardson*, 754 F.3d 1143 (9th Cir. 2014)); and (4) SORNA unconstitutionally regulates inactivity in violation of *National Federation of*

Independent Business v. Sebelius, 567 U.S. 519 (2012) (rejected in *United States v. Cabrera-Gutierrez*, 756 F.3d 1125 (9th Cir. 2014)).

Elk Shoulder acknowledges the Ninth Circuit has rejected all of his arguments, but argues those cases were wrongly decided. Even if the Court agreed with Elk Shoulder, it is bound by circuit authority and has no choice but to follow it. *Hart v. Massanari*, 266 F.3d 1155, 1175 (9th Cir. 2001). For these same reasons, the Court denied a nearly identical motion to dismiss from one of Elk Shoulder's earlier failure-to-register cases, *United States v. Elk Shoulder*, No. 1:17-CR-40-BLG-SPW (D. Mont. July 31, 2017). Elk Shoulder's motion to dismiss (Doc. 15) is therefore DENIED.

DATED this 22nd day of October, 2019.


SUSAN P. WATTERS
UNITED STATES DISTRICT JUDGE